IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 2892 OF 2007

The State of Maharashtra
and others. ... Applicants.

V/s.

Shammi Shantanu Parab & Anr. ... Respondents.

Ms.S.D.Shinde, A.P.P. for the applicants.

S.V.Marwadi for the respondents.

CORAM: V.C.DAGA, J.

DATED: 18th October 2007.

P.C.:

. Heard learned A.P.P. for the applicants and learned counsel for the respondents.

2. The prosecution has moved this application seeking to set aside the order dated 11th May, 2007 passed in Anticipatory Bail Application No.581/2007 by the Additional Sessions Judge, Greater Mumbai whereby anticipatory bail has been granted in favour of the respondents.

3. The learned A.P.P., appearing for the State, submits that in spite of specific request for grant of time to file the report of the concerned police

station and argue the matter on merits, no time was granted by the Court below, and the Court proceeded to pass impugned order dated 11th May, 2007 even prior to the registration of crime. The affidavit dated 14th September, 2007 of the Additional Public Prosecutor for Greater Mumbai, Sessions Court is filed on record. The learned A.P.P. further submits that the impugned order granting anticipatory bail has not only been passed prior to the registration of crime but has been passed without putting any time-frame for the operation of the said order.

4. The respondents have also filed affidavit to counter the above submissions contending that advance notice was given to the prosecution. Needless to mention that Mr.Marwadi, learned counsel appearing for the applicants tried to justify the impugned order, however, later on, he submitted that without recording any reasons or without examining merits or demerits of the order, by consent of parties, it be set aside and matter be remitted back to the Court below with liberty in favour of the respondents to move appropriate application to seek anticipatory bail keeping all the rival contentions open.

5. In the above view of the matter and looking to the submissions advanced, the impugned order dated 11th May, 2007 is quashed and set aside. Anticipatory

bail granted in favour of the respondents- accused stands cancelled by consent of parties dispensing with the reasons in support thereof. The respondents would be free to move appropriate application before the Sessions Court to seek anticipatory bail within two weeks from today. In the event of any such application, the learned Sessions Judge shall decide the same on its own merits without getting influenced by the impugned order which is being set aside. Needless to mention that, the Additional Public Prosecutor, Sessions Court shall be entitled to 72 hours notice of the said application. All rival contentions are kept open.

7. In the result, application is allowed in terms of this order.

JUDGE